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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40449-2022 (O&M)

Date of decision: 31.07.2023

Kirna

...Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Akashdeep Miglani, Advocate and
Mr. Adarshdeep Singh, Advocate,
for the petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.96 dated 28.06.2022, registered under Section 22 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Kabarwala, District Sri Muktsar Sahib.

2. Per allegations in the FIR, the police party, in the area of Police Station Kabarwala, signaled two persons riding on a motorcycle to stop. On seeing the police party, petitioner and co-accused turned around to flee, but in the process fell off their motorcycle. A polythene bag containing 250 tablets of Clobedol-100 SR also fell on the road and same was confiscated from the spot. Both riders were immediately taken in custody.

3. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case. He submits that the alleged recovery effected from the plastic bag has been planted on the petitioner. He further submits that petitioner is in custody since 28.06.2022. Challan has already been presented before the competent Court. Charges have been framed. There are 15 prosecution witnesses but none of the witnesses has been examined till date. Petitioner is not required for custodial interrogation. He submits that co-accused of the petitioner, namely Vicky has already

better footing, and yet she continues to be in jail, he contends. He also argues that on the ground of parity alone, petitioner is entitled to be released on bail during pendency of trial.

4. On the other hand, learned State counsel opposes the bail petition. She submits that petitioner has committed a serious offence. She however, admits that quantity of contraband recovered falls under the non-commercial quantity. She further points out that petitioner is though involved in another case under NDPS Act, but she is on bail in that case. In case petitioner is granted concession of bail, there are chances of her fleeing.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. Challan is stated to have been presented, charges have been framed. Investigation is thus complete *qua* petitioner, she is thus not required for custodial interrogation. Trial has commenced and the case is fixed for prosecution evidence but none of the prosecution witnesses out of 15 witnesses has been examined so far. Commencement/conclusion of the trial is likely to take quite sometime. Allegations against petitioner are a matter of trial at this stage.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for almost 01 year and 1 month in preventive custody, she being behind bars since 28.06.2022. She is being kept in preventive custody merely on an unfounded suspicion that if she is let out, she may either tamper with evidence and/ or influence witnesses. There is no documentary evidence and it is more in the nature of FSL report *qua* contraband, already filed in the Court below to which accused has no access. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

8. Petitioner is stated to be 38-year old, mother of two minor children, who are derived of natural care and upbringing in her absence. Being a mother of two minors,

it is unlikely that she is flight risk or will flee from the trial proceedings. Offence allegedly committed by petitioner is of non-violent nature and in that sense her release on bail is not a threat to the society at large by committing any violent crime.

9. Co-accused/Vicky, husband of petitioner, has been granted concession of bail by this court vide order dated 24.07.2023. Role attributed to the petitioner appears to be at par with that of her co-accused Vicky. In the premise, I see no ground as to why petitioner should not be meted out with similar treatment.

10. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

11. Accordingly, petitioner is ordered to be released on bail on her furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where her case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

12. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of her bail in the instant case.

13. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned Trial Court shall proceed without being influenced with this order.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

31.07.2023
vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No